

# **Exhibit I**

4/5/05

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

TRAVELERS CASUALTY AND SURETY COMPANY  
As Administrator for RELIANCE INSURANCE COMPANY

Civil Action No.: 04 Civ. 5101  
(HB)

Plaintiff,

**ECF CASE**

VS

THE DORMITORY AUTHORITY OF THE STATE OF  
NEW YORK, TDX CONSTRUCTION CORP. and KOHN,  
PERDERSON, FOX & ASSOCIATES, P.C.,

**ANSWER TO AMENDED  
FOURTH-PARTY  
COMPLAINT**

Defendants,

DORMITORY AUTHORITY OF THE STATE OF NEW  
YORK,

Third-Party Plaintiff,

VS

TRATAROS CONSTRUCTION, INC. and TRAVELERS  
CASUALTY AND SURETY COMPANY,

Third-Party Defendants,

TRATAROS CONSTRUCTION, INC. and TRAVELERS  
CASUALTY AND SURETY COMPANY,

Fourth-Party Plaintiffs,

VS

G.M. CROCKETT, INC., CAROLINA CASUALTY  
INSURANCE COMPANY, BARTEC INDUSTRIES INC.,  
DAYTON SUPERIOR SPECIALTY CHEMICAL CORP.,  
SPECIALTY CONSTRUCTION BRANDS, INC. t/a TEC,  
KEMPER CASUALTY INSURANCE COMPANY d/b/a  
KEMPER INSURANCE COMPANY, GREAT AMERICAN  
INSURANCE COMPANY, NATIONAL UNION FIRE  
INSURANCE COMPANY OF PITTSBURGH, PA., UNITED  
STATES FIRE INSURANCE COMPANY, ALLIED WORLD  
ASSURANCE COMPANY (U.S.) INC. f/k/a COMMERCIAL  
UNDERWRITERS INSURANCE COMPANY, ZURICH  
AMERICAN INSURANCE COMPANY d/b/a ZURICH  
INSURANCE COMPANY, OHIO CASUALTY INSURANCE

COMPANY d/b/a OHIO CASUALTY GROUP, HARLEYSVILLE  
MUTUAL INSURANCE COMPANY (a/k/a HARLEYSVILLE  
INSURANCE COMPANY, an insurer for BARTEC INDUSTRIES  
INC.), JOHN DOES 1-20, and XYZ CORPS. 1-12,

Fourth-Party Defendants.

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Zurich American Insurance Company ("Zurich"), sued herein incorrectly as Zurich American Insurance Company d/b/a Zurich Insurance Company, by its attorneys, Melito & Adolfsen P.C., answers the Fourth-Party Amended Complaint ("the Complaint"), upon information and belief, as follows:

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "1" of the Complaint.
2. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "2" of the Complaint.
3. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "3" of the Complaint.
4. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "4" of the Complaint.
5. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "5" of the Complaint.
6. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "6" of the Complaint.
7. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "7" of the Complaint.
8. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "8" of the Complaint.



9. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "9" of the Complaint.

10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "10" of the Complaint.

11. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "11" of the Complaint.

12. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "12" of the Complaint.

13. Denies the truth of the allegations contained in paragraph "13" of the Complaint except admits that Zurich is incorporated in the State of New York with its principal place of business in the State of Illinois.

14. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "14" of the Complaint.

15. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "15" of the Complaint.

16. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "16" of the Complaint.

17. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "17" of the Complaint.

18. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "18" of the Complaint.

19. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "19" of the Complaint.

20. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "20" of the Complaint.

21. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "21" of the Complaint.

22. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "22" of the Complaint.

23. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "23" of the Complaint.

24. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "24" of the Complaint.

25. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "25" of the Complaint.

26. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "26" of the Complaint.

27. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "27" of the Complaint.

28. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "28" of the Complaint.

29. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "29" of the Complaint.

30. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "30" of the Complaint.

31. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "31" of the Complaint.

**FIRST COUNT AGAINST CROCETTI AND BARTEC**

32. As and for a response to paragraph "32" of the Complaint, Zurich repeats, realleges and reiterates each and every allegation contained in paragraphs "1" through "31" of the Answer with the same force and effect as if fully set forth at length herein.

33. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "33" of the Complaint.

34. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "34" of the Complaint.

35. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "35" of the Complaint and refers all questions of law to the Court.

36. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "36" of the Complaint and refers all questions of law to the Court.

37. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "37" of the Complaint and refers all questions of law to the Court.

38. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "38" of the Complaint and refers all questions of law to the Court.

39. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "39" of the Complaint and refers all questions of law to the Court.

40. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "40" of the Complaint and refers all questions of law to the Court.

**SECOND COUNT AGAINST CROVETTI AND CAROLINA  
CASUALTY BY TRATROS ALONE**

41. As and for a response to paragraph "41" of the Complaint, Zurich repeats, realleges and reiterates each and every allegation contained in paragraphs "1" through "40" of the Answer with the same force and effect as if fully set forth at length herein.

42. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "42" of the Complaint.

43. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "43" of the Complaint.

44. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "44" of the Complaint.

**THIRD COUNT AGAINST CROCETTI AND  
CAROLINA CASUALTY BY TRAVELERS**

45. As and for a response to paragraph "45" of the Complaint, Zurich repeats, realleges and reiterates each and every allegation contained in paragraphs "1" through "44" of the Answer with the same force and effect as if fully set forth at length herein.

46. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "46" of the Complaint and refers all questions of law to the Court.

47. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "47" of the Complaint.



48. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "48" of the Complaint.

49. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "49" of the Complaint.

50. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "50" of the Complaint.

51. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "51" of the Complaint.

**FOURTH COUNT AGAINST CROCETTI AND BARTEC**

52. As and for a response to paragraph "52" of the Complaint, Zurich repeats, realleges and reiterates each and every allegation contained in paragraphs "1" through "51" of the Answer with the same force and effect as if fully set forth at length herein.

53. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "53" of the Complaint.

54. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "54" of the Complaint and refers all questions of law to the Court.

55. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "55" of the Complaint and refers all questions of law to the Court.

56. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "56" of the Complaint and refers all questions of law to the Court.

57. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "57" of the Complaint and refers all questions of law to the Court.

58. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "58" of the Complaint and refers all questions of law to the Court.

59. Denies the truth of the allegations contained in paragraph "59" of the Complaint and refers all questions of law to the Court.

**FIFTH COUNT AGAINST DAYTON AND TEC**

60. As and for a response to paragraph "60" of the Complaint, Zurich repeats, realleges and reiterates each and every allegation contained in paragraphs "1" through "59" of the Answer with the same force and effect as if fully set forth at length herein.

61. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "61" of the Complaint.

62. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "62" of the Complaint.

63. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "63" of the Complaint.

64. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "64" of the Complaint.

65. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "65" of the Complaint.

66. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "66" of the Complaint.

67. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "67" of the Complaint.

**SIXTH COUNT AGAINST JOHN DOES 1-20 AND XYZ CORPS. 1-12**

68. As and for a response to paragraph "68" of the Complaint, Zurich repeats, realleges and reiterates each and every allegation contained in paragraphs "1" through "67" of the Answer with the same force and effect as if fully set forth at length herein.

69. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "69" of the Complaint.

70. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "70" of the Complaint.

71. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "71" of the Complaint.

72. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "72" of the Complaint.

73. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "73" of the Complaint.

74. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "74" of the Complaint.

75. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "75" of the Complaint.

76. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "76" of the Complaint.

**SEVENTH COUNT AGAINST KEMPER, GREAT AMERICAN,  
NATIONAL UNION, U.S. FIRE, ALLIED, ZURICH,  
OHIO CAS., HARLEYSVILLE, AND XYZ CORPS. 1-12**

77. As and for a response to paragraph "77" of the Complaint, Zurich repeats, realleges and reiterates each and every allegation contained in paragraphs "1" through "76" of the Answer with the same force and effect as if fully set forth at length herein.

78. Denies the truth of the allegations contained in paragraph "78" of the Complaint to the extent those allegations are directed against Zurich, denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations and refers all questions of law to the Court.

79. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "79" of the Complaint.

80. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "80" of the Complaint and refers all questions of law to the Court.

81. Denies the truth of the allegations contained in paragraph "81" of the Complaint to the extent those allegations are directed against Zurich, denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations and refers all questions of law to the Court.

82. Denies the truth of the allegations contained in paragraph "82" of the Complaint to the extent those allegations are directed against Zurich, denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations and refers all questions of law to the Court.

83. Denies the truth of the allegations contained in paragraph "83" of the Complaint and refers all questions of law to the Court.

84. Denies that Trataros and Travelers are entitled to declaratory relief that coverage exists as to the claims against Zurich or that it is entitled to compensatory damages, counsel fees and costs as alleged in paragraph "84" of the Complaint.

**FIRST AFFIRMATIVE DEFENSE**

The Complaint fails to state a claim upon which relief may be granted.

**SECOND AFFIRMATIVE DEFENSE**

Fourth-party plaintiffs are not Named Insureds or additional insureds under the Zurich Policy

**THIRD AFFIRMATIVE DEFENSE**

Fourth-party plaintiffs have failed to satisfy all conditions precedent, including, but not limited to the standing requirements of New York Insurance Law section 3420(a).

**THIRD AFFIRMATIVE DEFENSE**

Fourth-party plaintiffs' claims against Zurich are barred by lack of privity of contract.

**FOURTH AFFIRMATIVE DEFENSE**

Fourth-party plaintiffs and/or other persons or entities seeking coverage herein have failed to comply with all of the terms and conditions of the Zurich Policy, including, but not limited to the conditions requiring timely notice of occurrence, claim and suit and requiring timely forwarding of suit papers.

**FOURTH AFFIRMATIVE DEFENSE**

Fourth-party plaintiffs' claims are barred by the waiver and/or estoppel doctrines.

**FIFTH AFFIRMATIVE DEFENSE**

If any claim is covered under the Zurich Policy, and is also covered, in whole or in part, under any other policy of insurance, such other insurance provides co-insurance and the Zurich

Policy shall apply only to its share of any defense and indemnity obligations pursuant to the policies' "other insurance" clauses.

**FIRST CROSS-CLAIM AGAINST FOURTH-PARTY DEFENDANTS**

If the Court does not dismiss this action and grants a declaratory judgment and/or money award in favor of fourth-party plaintiffs against Zurich, then Zurich will be entitled to contribution and judgment over against one or more fourth-party defendants for a proportionate part of any recovery that plaintiffs may obtain against Zurich.

WHEREFORE, Zurich demands judgment:

- (1) Dismissing with prejudice the Complaint against Zurich in its entirety, or
- (2) Granting it judgment on its cross-claim against fourth-party defendants in the amount of any award against Zurich in this action;
- (3) Awarding Zurich its costs and attorneys' fees incurred in the defense of this action; and
- (4) Granting Zurich such other and further relief as this Court may deem just and proper.

Dated: New York, New York  
April 5, 2005

MELITO & ADOLFSEN P.C.

By: 

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S. Dwight Stephens (SS-2161)  
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*Attorneys for Fourth-Party Defendant  
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Zurich Insurance Company*

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*Attorneys for Fourth-Party Defendant Specialty Construction Brands, Inc. t/a TEC*

**AFFIDAVIT OF SERVICE BY MAIL**

CITY OF NEW YORK        )  
  ) ss.:  
COUNTY OF NEW YORK    )

ANDREW GARGANO, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at STATEN ISLAND, NEW YORK.

That on 5<sup>th</sup> day of April, 2005 deponent served the within **ANSWER TO AMENDED FOURTH-PARTY COMPLAINT** upon:

Guido Weber, Esq.  
Dreifuss Bonacci & Parker, LLP  
26 Columbia Turnpike, North Entrance  
Florham Park, New Jersey 07932

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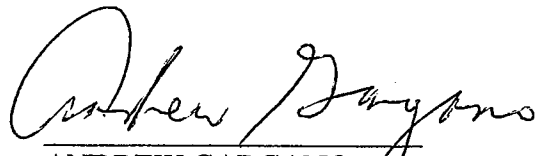
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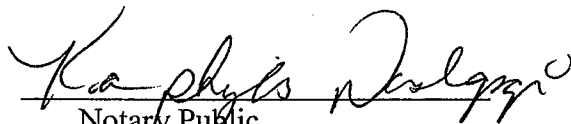
Christian H. Gannon, Esq.  
Segal McCambridge Singer & Mahoney, Ltd.  
805 Third Avenue, 19<sup>th</sup> Floor  
New York, New York 10022



attorneys in this action, at the above address designated by said attorneys for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.

  
ANDREW GARGANO

Sworn to before me this  
5<sup>th</sup> day of April, 2005

  
Notary Public



KAREN PHYLLIS NAUSLAR-PAPIR  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 01NA6083751  
QUALIFIED IN RICHMOND COUNTY  
COMMISSION EXPIRES NOVEMBER 25, 2006